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Committee on Financial Services  
Subcommittee on National Security, Illicit Finance, and International Financial Institutions

Hearing on  
“Potential Consequences of FinCEN’s Beneficial Ownership Rulemaking”

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Chairman Luetkemeyer, Ranking Member Beatty, and Members of the Committee,

Thank you for holding this important hearing and for inviting me to testify today.

On behalf of Transparency International U.S. (TI U.S.), I appreciate the opportunity to discuss progress toward implementation of the Corporate Transparency Act (CTA), a foundational reform to combat transnational crime and corruption.

TI U.S. is part of the world’s largest and oldest coalition dedicated to fighting corruption. In collaboration with national chapters in more than 100 countries, we work with governments, businesses, and citizens to stop the abuse of entrusted power. Through a combination of research, advocacy, and policy, we engage with stakeholders to increase public understanding of corruption and hold institutions and individuals accountable.<sup>1</sup>

We want to thank the leadership of the Financial Services Committee for working in a bipartisan fashion to enact the CTA in 2021. Today, more than one hundred countries<sup>2</sup> have adopted or have pledged to adopt similar reforms to help protect the integrity of the global financial system from abuse by rogue actors.

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<sup>1</sup> For more information on TI U.S., please see <https://us.transparency.org/>.

<sup>2</sup> Open Ownership, Map of beneficial ownership commitments and action, <https://www.openownership.org/en/map/>.

## Recalling the Threats

In the leadup to passage of the CTA, the Committee heard a litany of examples of how anonymous corporate structures were used to facilitate the flow of illicit finance and enrich and enable dangerous elements that threatened our national security. For example, in a Global Witness report called *Hidden Menace*,<sup>3</sup> researchers found numerous incidents in which the Department of Defense had contracted with anonymous companies that, at best, defrauded the U.S. military and, at worst, endangered the lives of troops serving overseas. In one case, the Pentagon contracted with a U.S. company to supply services to troops in Afghanistan. The company was secretly owned by interests associated with the Taliban. The United States Government was literally supplying funds that could be used to purchase guns and other weapons aimed at our troops.

These and other similar reports are why nearly 100 civilian and former military national security experts signed a letter to Congress in support of the collection of beneficial ownership information.<sup>4</sup>

Alarming, these individual stories are not isolated incidents but are part of a larger collection of threats to the safety and security of our communities and our nation:

- According to a 2011 study by the Stolen Asset Recovery Initiative, a joint effort of the World Bank and United Nations Office on Drugs and Crime, anonymous companies were used to hide the proceeds of corruption in 70 percent of the grand corruption cases reviewed, with U.S. entities being the most common.<sup>5</sup>
- According to a 2018 study by the anti-human trafficking group Polaris, anonymous companies play an outsized role in hiding the identities of the criminals behind trafficking enterprises, specifically illicit massage businesses.<sup>6</sup> The study found that of the more than 6,000 illicit massage businesses for which Polaris found incorporation records, only 28 percent of these criminal enterprises have an actual person listed on the business registration records at all, and that only 21 percent of the 6,000 business records found for illicit massage parlors specifically name the owner — although, even in those cases, there is no way to know for certain if that information is legitimate.
- In the 2018 National Money Laundering Risk Assessment,<sup>7</sup> the U.S. Department of Treasury wrote that “The nature of synthetic drug trafficking, and associated financial flows, has changed

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<sup>3</sup> Global Witness, *Hidden Menace*, July 2016, <https://www.globalwitness.org/en/reports/hidden-menace/>.

<sup>4</sup> The FACT Coalition, “100 National Security and Foreign Policy Experts Back Action on Anonymous Shell Companies, July 20, 2022, <https://thefactcoalition.org/100-national-security-and-foreign-policy-experts-back-action-on-anonymous-shell-companies/>.

<sup>5</sup> StAR Initiative of the World Bank & United Nations’ Office on Drugs and Crime, *Puppet Masters*, October 24, 2011, <https://star.worldbank.org/publications/puppet-masters>.

<sup>6</sup> Polaris Project, *Hidden in Plain Sight*, April 1, 2018, <https://polarisproject.org/press-releases/corporate-secrecy-fuels-human-trafficking-in-united-states/>.

<sup>7</sup> U.S. Department of Treasury, *National Money Laundering Risk Assessment*, 2018, [https://home.treasury.gov/system/files/136/2018NMLRA\\_12-18.pdf](https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf).

with the rise of China as a supplier of fentanyl and its analogues and precursors. China is the primary source of fentanyl and fentanyl analogues.” The Assessment noted that the U.S. Drug Enforcement Agency determined there is an Asian version of the Black-Market Peso Exchange “with goods being exported to China by U.S. front companies as payment for drugs.”

Evidence was also provided showing how anonymous companies are used to undermine our markets and disrupt legitimate business. There were numerous examples cited in which anonymous companies disrupt supply chains, fraudulently compete for contracts, and engage in illicit commerce through the selling of counterfeit and pirated goods. In a report authored by David M. Luna, a former U.S. national security official and then-chair of the Anti-Illicit Trade Committee of the United States Council for International Business, examined the role of anonymous companies in facilitating a growing global illegal economy valued at between \$500 billion and \$3 trillion.<sup>8</sup> Mr. Luna found:

- Anonymous companies have helped criminals across the United States sell in recent years several billion dollars in fake and counterfeited luxury handbags and apparel accessories branded as Burberry, Louis Vuitton, Gucci, Fendi, Coach, and Chanel, as well as sportswear and gear from the NFL, NBA, and MLB including Nike, Adidas, and Under Armour, among many others.
- Anonymous companies were used to import and sell to American consumers, through internet pharmacies, counterfeit medicines from India and China worth hundreds of millions of dollars. These counterfeits included fake versions of Arimidex, a breast cancer treatment; Lipitor, the cholesterol drug; Diovan, for high blood pressure; and other medications such as illicit OxyContin, Percocet, Ritalin, Xanax, Valium, and NS Ambien.
- Anonymous companies assisted in selling knock-off parts to the Pentagon that have cost the U.S. military tens of millions of dollars.
- Anonymous companies helped an organized criminal network sell counterfeit cellphones and cellphone accessories on Amazon and eBay. They also misrepresented goods worth millions of dollars as new and genuine Apple and Samsung products.
- Anonymous companies were leveraged to help criminals sell millions of dollars’ worth of counterfeit computer anti-virus software.

Since the passage of the CTA, and prior to implementation, the evidence of harm continues to build.

A report from earlier this year on CBS News discussing the difficulties of finding and freezing funds of sanctioned Russian oligarchs found that:

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<sup>8</sup> David Luna, *Anonymous Companies Help Finance Illicit Commerce and Harm American Businesses and Citizens*, May 2019, <https://thefactcoalition.org/report/anonymous-companies-help-finance-illicit-commerce-and-harm-american-businesses-and-citizens/>.

[H]igh-end clients seldom buy luxury goods in their own name. Instead, when purchasing a yacht, for example, the ultrarich often use an intricate web of shell companies. The company listed on the purchasing document is typically owned by a separate company in another country. Those two companies, in turn, might be owned by another company in a third country. These intermediary corporations rarely list the true owner's name.<sup>9</sup>

In the U.S. specifically, a company in Delaware that reportedly owns a \$15 million mansion in Washington, D.C., is linked to one of Vladimir Putin's closest allies. Also reportedly connected to the oligarch is a \$14 million townhouse in New York City owned by a separate Delaware company.<sup>10</sup>

Additional evidence<sup>11</sup> explains how drug cartels and other criminals rely on anonymous companies to fuel their operations. Consider the following examples from a recent factsheet produced by TI U.S.:

- The Zheng drug trafficking organization—run by Chinese synthetic opioid trafficker Fujing Zheng— manufactured and shipped deadly fentanyl analogues and 250 other drugs to some 37 U.S. states, with drugs sold by the group directly tied to the fatal overdoses of two people in Ohio. The traffickers used shell companies formed in Massachusetts as they mailed, repackaged, and redistributed the drugs across the country.
- After the death of an individual in Idaho from elevated levels of prescription opioids and fentanyl, law enforcement agents began investigating a drug trafficking organization that operated an online marketplace for a variety of controlled substances, including the fentanyl analogue p-fluoroisobutyryl fentanyl, oxycodone, hydrocodone, and the synthetic opioid U-47700. It was discovered that the organization used wire transfers between U.S. and Dominican Republic-based shell company bank accounts, as well as money remitters and money couriers, to send millions of dollars' worth of drug proceeds from the United States to the Dominican Republic.
- The infamous Sinaloa Cartel relied on a criminal organization to organize the pickup of bulk cash proceeds from the sales of heroin and methamphetamine in Illinois, Nebraska, Massachusetts, New York, Maryland, North Carolina, Pennsylvania, and elsewhere in the United States before laundering the funds through a network of shell companies incorporated in Wyoming and overseen by a U.S. citizen in Arizona.

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<sup>9</sup> CBS News, *How Prosecutors Seize Sanctioned Russian Assets*, January 15, 2023, <https://www.cbsnews.com/news/russian-asset-seizure-60-minutes-2023-01-15/>.

<sup>10</sup> Transparency International U.S., *Stop American Complicity in Russian and Other Foreign Corruption*, July 2022, <https://us.transparency.org/app/uploads/2022/07/ENABLERS-Act-4.13.22.pdf>.

<sup>11</sup> Transparency International U.S., *Stop Those Who Enable the Trafficking of Fentanyl and Other Drugs into the United States*, June 2023, <https://us.transparency.org/resource/enablers-and-drug-trafficking-factsheet/>.

- A Los Angeles man was found guilty of distributing wholesale quantities of synthetic cannabinoids across the country via an online business—for which he hired a financial manager—and laundering millions of dollars by moving the profits through a network of shell companies.
- A California accountant pled guilty to using shell companies to launder money on behalf of the international drug trafficking organization “ODOG,” which operates in the United States, Central and South America, and Australia. Between 2012-2016, ODOG trafficked thousands of kilograms of heroin, methamphetamine, MDMA, cocaine, and other drugs in wholesale and retail quantities.
- A New York man plead guilty to helping to launder over \$650 million worth of illegal narcotics proceeds through banks accounts associated with shell companies in New York, New Jersey, Pennsylvania, and elsewhere before wiring funds back to entities in China.
- A drug trafficking organization operated a \$200-million prescription drug diversion scheme across California, Minnesota, Ohio, and Puerto Rico by forming shell companies to open bank accounts in order to receive and distribute the proceeds of their transactions.

### **Concerns with the Draft Rules**

To address these harms and many others, Congress appropriately included the CTA in the FY2021 National Defense Authorization Act. The text of the law was carefully crafted. Negotiations on almost all aspects of the law led to balanced and precise wording to guide the rulemaking.

As a result, there are several parts of the rulemakings to date that the Financial Crimes Enforcement Network (FinCEN), the bureau charged with drafting the CTA rules, produced in a way that captures both the plain text of the law and the purpose for which it was intended. Definitions are true to the statute and consistent with emerging global norms. Exemptions to the law’s reporting obligations were tailored to avoid unintended gaps or loopholes that bad actors might exploit.

In particular, to address data security concerns, congressional drafters wrote into the law specific access protocols to ensure data security, with strict penalties for misuse. FinCEN has appropriately incorporated those directives into the rule.

However, there are provisions in the proposed “access” rule and draft reporting form that raise substantial concerns.

Given the data security protections, it is surprising to see FinCEN include provisions in the proposed access rule (the Draft Rule) that create unnecessary and ill-advised obstacles for law enforcement and those financial institutions we require to assist in anti-money laundering checks. Several of these provisions were either considered and rejected by the law’s congressional authors or are in conflict with the plain language of the law. The following are

related excerpts from comment letters and other statements made by TI U.S. expressing our concerns with proposals by FinCEN regarding implementation of the CTA.

1. The Draft Rule invents significant new barriers to access by state, local, and tribal law enforcement that have no basis in the CTA. As we stated in our written comment on the implementation of the CTA, when it comes to investigations into foreign corruption and other crimes, “restricted access to beneficial ownership information or other unnecessary hurdles would mean cases cannot move forward and criminals may escape justice.” In order to ensure effective access in practice, we stressed, the CTA’s implementing rules must reflect the plain language and clear intent of the enacting law. Unfortunately, FinCEN’s proposed rule regarding access to the database by state, local, and tribal law enforcement deviates from the clear, precise, legislatively-historied language of the CTA.

The CTA’s language itself is relatively straightforward: it permits FinCEN to disclose beneficial ownership information upon receipt of a request from a state, local, or tribal law enforcement agency “if a court of competent jurisdiction, including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation.” FinCEN’s proposed rule, however, adds two highly consequential requirements to this framework. A requesting agency must also “submit to FinCEN” a “copy of a court order from a court of competent jurisdiction authorizing the agency to seek the information in a criminal or civil investigation” as well as a “written justification that sets forth specific reasons why the requested information is relevant to the criminal or civil investigation.”

As we wrote in our comment, the CTA does not permit FinCEN to independently confirm such an authorization, let alone to condition release of the requested information on an actual demonstration or evidencing of such an authorization. In debating the precise language at issue here, Congress considered, and rejected, the requirement that a requesting agency first obtain a court order or subpoena (as well as the requirement that a requesting agency’s request be reasonably relevant and material to an investigation, among other formulations). Instead, authorization from a court officer was deliberately chosen out of a spectrum of available options because of its relatively low barrier to usage and lack of judicial formalism, as well as to allow for a wide range of practical access options that required minimum involvement from the relevant court or tribal equivalent. For example, during negotiations of the CTA, it was expressly discussed and understood that the authorization requirement could be satisfied via a front-window court employee, such as a clerk, “authorizing” an agency’s request in person or via email, phone, or online messaging function (among other options).

The proposed rule’s requirements that an agency obtain and submit documentation of a court order, as well as submit (i) written (ii) justification that sets forth (iii) specific (iv) reasons why the requested information is relevant to an investigation, are pure legal fictions of FinCEN’s creating. They have zero traceable origin to the text of the CTA or its legislative history. At bottom, all that the CTA requires is that a requesting agency aver

or certify that an officer of a court of competent jurisdiction (or its tribal equivalent) has authorized the agency to seek the information in a criminal or civil investigation. The inquiry stops there. To require anything more is to construct wholly unsubstantiated legal artifices that will serve as serious practical barriers to the effective use and utility of the database.<sup>12</sup>

2. With the U.S. financial system serving as the backbone of the world economy and corporate infrastructure operating on a truly global basis, timely, efficient, effective, and practical foreign access to U.S. Beneficial Ownership Information (BOI) is vital to achieving the CTA's stated purposes. As such, the CTA states that FinCEN may disclose BOI upon receipt of a request from a federal agency on behalf of:

[A] law enforcement agency, prosecutor, or judge of another country, including a foreign central authority or competent authority (or like designation), under an international treaty, agreement, convention, or official request made by law enforcement, judicial, or prosecutorial authorities in trusted foreign countries when no treaty, agreement, or convention is available.

We commend the Draft Rule for following the CTA directive that any federal agency—as opposed to FinCEN alone—be permitted to serve as an intermediary for foreign requests. Permitting foreign agencies to engage with U.S. counterparts with similar responsibilities, authorities, and expertise will help maximize appropriate access to BOI. We also agree with the Draft Rule's conclusion that foreign access to BOI should not be limited to law enforcement agencies, but also available to foreign national security and intelligence agencies.

However, FinCEN must remove the Draft Rule's separate, more-demanding training requirement for foreign requesters. For personnel of certain foreign requesters, BOI can only be accessed by those who have "undergone training on the appropriate handling and safeguarding of information." This requirement clashes with the corollary requirement for personnel of U.S. state, local, or tribal law enforcement agencies, who can access BOI if they have either undergone training or obtained the information from someone who has. This discrepancy has no basis in the text of the CTA, creates an unnecessary double standard, and will result in significant, practical barriers for foreign requesters. It must be removed.

In addition, the database's access framework for foreign agencies would be well-served by clear criteria for determining which foreign countries are "trusted" countries. In the Draft Rule, FinCEN proposes that this determination be conducted on a "case-by-case basis", noting that the CTA "does not provide criteria for determining whether a

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<sup>12</sup> Transparency International U.S., *Four Takeaways from the Proposed Rule on Access To the Beneficial Ownership Database*, December 2022, <file:///Users/garykalman/Downloads/12.21-Four-Takeaways-from-the-Second-Draft-CTA-Rule.pdf>.

particular foreign country is ‘trusted,’ but rather, provides FinCEN with considerable discretion to make this determination.” Leaving such a consequential determination to the discretion of FinCEN and FinCEN alone, however, could allow for disparate determinations or actions from the bureau, and, writ large, does not provide sufficient notice or guidance as to which foreign countries will have access to BOI—thus delaying a pivotal decision that risks creating significant confusion and diminished utility for the database.

Clear, baseline criteria would avoid these risks, and could include a country’s membership in or alliance with any international body that is friendly to the foreign policies of the United States.<sup>13</sup>

3. The CTA provides that financial institutions (FIs) may use BOI obtained from the database “to facilitate the compliance of [the FI] with customer due diligence requirements under applicable law” and only if the relevant reporting company consents to the inquiry.

We believe that this language—“customer due diligence requirements [note: not Customer Due Diligence] under applicable law”—is unique in federal law and was deliberately chosen to encompass and reflect a much larger category of requirements than identifying and verifying beneficial owners of legal entity customers. This reading is supported by other relevant provisions in the CTA, including language addressing how the Customer Due Diligence (CDD) Rule will be revised as appropriate:

[T]o confirm the beneficial ownership information provided directly to the financial institutions to facilitate the compliance of those financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.

Cabining the language “customer due diligence requirements under applicable law” to formal CDD Rule compliance could very likely exclude FIs from being permitted to use BOI provided by the database for related processes such as sanctions screening, instead necessitating that such processes be conducted separately, and somewhat redundantly.

FinCEN should reject such an impractical, forced interpretation. FIs should instead be allowed to use BOI for the entire range of AML, countering the financing of terrorism (CFT), and other related program activities for which they currently use BOI (including anti-bribery, identification and reporting of suspicious activity, anti-fraud, and sanctions and tax transparency activities), throughout the life cycle of the customer account. Otherwise, the database as a whole may prove simply nonfunctional to the thousands of FIs across the United States.

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<sup>13</sup> Transparency International U.S., *TI U.S. Comment on Draft Rule Regarding Access to Beneficial Ownership Database*, February 14, 2023, <https://us.transparency.org/resource/ti-us-comment-on-draft-rule-regarding-access-to-u-s-beneficial-ownership-database/>.

Furthermore, the Draft Rule provides that access by FIs will be “limited,” with FinCEN stating that it is not planning to permit FIs to run “broad or open-ended queries” in the database or to receive multiple search results, but rather to permit FIs to send to the database “information specific to [a] reporting company” and then receive an “electronic transcript” with the reporting company's information. This approach appears to be much more restrictive than the plain language of the CTA. More information and greater explanations are needed regarding how this approach can maintain pace with the anticipated number of FI requests, instill industry and regulator confidence, and maximize database utility.<sup>14</sup>

4. While thankfully withdrawn, a proposed BOI reporting form had included a check box for filers to indicate the information was unknown. Such a box would, at best, confuse reporting companies as to their obligations under the law and, at worst, provide opportunities for evasion.

The CTA states that “each reporting company shall submit to FinCEN a report that contains [BOI]” and that “a report delivered...shall...identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company[.]”

The CTA also states that in “promulgating the regulations required...the Secretary of the Treasury shall, to the greatest extent practicable...collect [BOI] in a form and manner that ensures the information is highly useful” and in promulgating the regulations “ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.”

Lastly, the CTA states that it is unlawful for any person to “willfully provide, or attempt to provide”—where “willfully” means a voluntary, intentional violation of a known legal duty. Any person that does so will be liable for a civil penalty of up to \$500 for each day that the violation continues or has not been remedied, and may be fined up to \$10,000 and/or imprisoned for up to two years.

Nevertheless, Part II of the Draft Form provides the following options: “Unable to identify all Company Applicants (check if you are unable to obtain any required information about one or more Company Applicants)” (Part II, Question 17) and “Unknown (check the box if you are not able to obtain this information about the Company Applicant)” (Part II, Question 19). Identical options appear with regard to the applicant’s last name, first name, date of birth, address type, address (number, street, and apartment or suite number), address (city), country/jurisdiction, state, zip/foreign postal code, identifying document, identifying document number, identifying document

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<sup>14</sup> Ibid.

jurisdiction, and identifying document image. Similar options appear in Part III of the Draft Form regarding the reporting company's beneficial owners (e.g., "Unknown (check the box if you are not able to obtain this information about the Beneficial Owner)"). Nowhere does the Draft Form request or require explanation for selecting such options.

The text of the CTA is unambiguous: Reporting companies "shall" submit a report that contains BOI and each report "shall" identify each beneficial owner and each applicant with respect to that reporting company. The CTA does not envision, let alone allow for, any other options.

Furthermore, throughout the entire 10-plus years of Congress's work and civil society's support of legislation to establish a U.S. beneficial ownership database, not a single example emerged where a legitimate reporting company would ever be incapable of identifying its beneficial owners. Put another way—no structure, arrangement, network, or constellation of ownership has ever been conceived, in nearly one dozen years, where a legitimate reporting company would not be able to identify, and thus report, its BOI. It is difficult to imagine ... that it is the policy of the United States Government that owners of a U.S. company could legally, even if inadvertently, co-own that company with sanctioned individuals simply because they were "unable" to identify to whom they had sold a controlling interest. If Treasury has somehow conceived of a scenario, undisclosed and undiscussed in its Draft Form, where the clear language of the CTA is inadequate, unworkable, or unkind to an otherwise fluid and consistent reporting scheme, such is a matter for Congress, not Treasury. Only Congress can establish such "Unknown" or "Unable" options, through appropriate legislation. Treasury lacks authority to do so on its own.

The "Unknown" and "Unable" options, in real terms, are far too sweeping and consequential to be properly viewed as mere exemptions (especially as reporting companies that are "unable to obtain" their BOI may be particularly higher risk, and thus their BOI particularly "highly useful"), yet even if they were, Treasury here has operated outside of the CTA's provided means of creating new exemptions via this Draft Form, and as such is acting squarely in violation of the CTA.

Treasury should instead abide by the fundamental, implicit determination made by Congress in its drafting of the CTA: In order for a reporting company to take advantage of the benefits and protections provided by formation or registration in the United States, that reporting company must report its BOI. Period. In other words, the CTA reflects a clear congressional determination—the price of establishing a reporting company in the U.S. is BOI transparency. Treasury's "Unknown" and "Unable" options negate that core bargain.

Finally, the practical implications of the “Unknown” and “Unable” options will be foreseeably disastrous for both those subject to the law and those who stand to benefit from it. For honest actors who must comply with the CTA, the inclusion of these options will create confusion and uncertainty around what the CTA requires of them. What inquiry, or standard, has Treasury created that they must now employ before checking “Unknown” or “Unable”? What is the distance between intentionally failing to report complete BOI and not being “able” to obtain it? Such vast ambiguity may very well expose tens of millions of persons and entities subject to the CTA to not only considerable confusion and uncertainty but potential criminal and civil liability.

Bad actors, on the other hand, will have been gifted a clear path for evading the law: So long as they have a hint of doubt as to the accuracy or completeness of the required BOI, so long as they do not intentionally fail to report “known,” complete BOI, they will argue, they can properly check “Unknown” and “Unable” and continue their course of business as if the CTA had never been given the force of law.

Perhaps most acutely, for users of the database—from the U.S. national security, defense, and intelligence communities to the tens of thousands of state, local, and tribal law enforcement agencies across the country, from the thousands of financial institutions with customer due diligence and related obligations to the foreign governments across the world working to bring corrupt officials to justice—a U.S. database that accepts “Unknown” and “Unable” will be a U.S. database that serves zero practical purpose to their work. Our database will only be as effective as it is accurate, and exceptions that swallow the rule leave no room for either.

We can think of no other legal duty, be it in the laws of Tax, Corporations, Campaign Finance, Labor, Ethics, Immigration, Real Estate, or the entirety of federal Criminal Law, where a legal requirement to affirmatively report or disclose information is simultaneously blunted by an accompanying option that translates to “if you’re able to.” The consequences of Treasury’s error are clear and critical. The “Unknown” and “Unable” options must be stricken from the form.<sup>15</sup>

5. FinCEN states in its Draft Rule that while a number of commenters to the ANPRM and Reporting NPRM have “affirmed the importance of verifying BOI to support authorized activities that rely on the information” the bureau “continues to review the options available to verify BOI within the legal constraints in the CTA.”

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<sup>15</sup> Transparency International U.S., TI U.S. *Comment on Treasury’s Draft Form for Reporting Beneficial Ownership Information*, March 21, 2023, <https://us.transparency.org/resource/ti-us-comment-on-treasurys-draft-form-for-reporting-beneficial-ownership-information/>.

It is self-evident that the database will only be as useful as it is accurate. For this obvious yet essential reason, Congress included the following language in the CTA:

The Secretary of the Treasury shall, to the greatest extent practicable, update the information described in subsection (b) [BOI] by working collaboratively with other relevant Federal, State, and Tribal agencies....Relevant Federal, State, and Tribal agencies, as determined by the Secretary of the Treasury, shall, to the extent practicable, and consistent with applicable legal protections, cooperate with and provide information requested by FinCEN for purposes of maintaining an accurate, complete, and highly useful database for beneficial ownership information.

We strongly encourage FinCEN to revisit its belief that the CTA limits its ability to verify BOI, and to instead employ the above language as clear legal justification for incorporating verification mechanisms that utilize existing government information into the database. The only potential limiting language in the above provision — “consistent with applicable legal protections” — is unspecific and outweighed by the amount and bandwidth of the surrounding language supportive of such verification, and, if interpreted as a limitation on verification, would sharply contrast with the broader intent of the law. In this original interpretive environment, with no known case law or other interpretations to serve as limitations, the full purpose of the CTA must be realized by a final rule that permits verification.

FinCEN can incorporate verification mechanisms into the database, for example, by relying on information collected by the U.S. Department of State (to electronically check reported names and passport numbers), the National Law Enforcement Telecommunications System (to check state drivers’ licenses and identification numbers), and the U.S. Postal Service (to check addresses), among other government agencies and entities. Such automated, real-time verification of BOI would provide a minimum level of assurance that reported information is accurate and reliable, and thus highly useful.

Verification of BOI is also necessary for the United States to be compliant with the relevant Financial Action Task Force (“FATF”) recommendation, which the U.S. was instrumental in FATF adopting. Such mechanisms would also reflect the legal requirements and positive practices of other countries with beneficial ownership databases.

For example, the European Union’s (EU’s) corollary AML directive includes the requirement that member states have verification mechanisms in place, and that those mechanisms be accurate and reliable. In 2022, TI conducted a survey on verification across the EU, reviewing the legal frameworks of 24 of 27 EU member states and sharing a questionnaire with beneficial ownership database authorities in order to confirm the mechanisms they had in place. Of the 18 member states that responded, 16 (of the 24 that TI assessed) included verification

requirements in their respective legislation, and 18 of the 24 required beneficial ownership ID or passport checks by law. Furthermore, 11 member states undertook additional verification on a risk-based approach, and 24 had reporting mechanisms that required obliged entities to report to the database any discrepancies in the information.

These requirements and practices drive home how verification is not only a best practice among other national databases, but an absolute necessity for ensuring the integrity of BOI. One need only look to the experience of the United Kingdom (“UK”), where a database without adequate verification mechanisms led to high-profile reports of clearly bogus entries, to see the consequences of unverified BOI. The UK is now moving to verify reported information, and the U.S. must learn from their experience by doing the same at this juncture. The CTA mandates that the Secretary of the Treasury promulgate regulations that “ensur[e] the [beneficial ownership] information is highly useful...”<sup>16</sup>

### **Need for Appropriate Resources**

We join the frustration by many on this Committee regarding the delays in finalizing CTA rules and implementing the law. We also understand the instinct to identify mechanisms to express that frustration, including decisions around future funding of the bureau.

However, given revelations by researchers, media outlets and recent hearings in the House Financial Services Committee regarding sanctions evasions and the financing of illicit drug trafficking, we would urge the Committee to support additional funding for this work. The myriad of threats to national and global security, and the role of illicit finance in fueling those threats, demands a strong, well-resourced U.S. financial intelligence unit.

In a May 2022 report titled *Up to the Task*, Transparency International U.S., in collaboration with our global network, found that FinCEN’s budget and staffing levels were similar to that of its counterpart in Australia, a country with an economy one-fifteenth the size of the United States’. There is a powerful argument that additional funds are needed for FinCEN to fully and effectively do what we ask of the bureau.<sup>17</sup>

At a minimum, we would ask the Committee to separate what we see as two distinct problems in the CTA rule writing and implementation process:

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<sup>16</sup> Transparency International U.S., *TI U.S. Comment on Draft Rule Regarding Access to Beneficial Ownership Database*, February 14, 2023, <https://us.transparency.org/resource/ti-us-comment-on-draft-rule-regarding-access-to-u-s-beneficial-ownership-database/>.

<sup>17</sup> Transparency International U.S., *Statement: New Report Finds Significant Obstacles to Uncovering Assets of Sanctioned Russian Oligarchs*, May 24, 2022, <https://us.transparency.org/news/new-report-finds-significant-obstacles-to-uncovering-assets-of-sanctioned-russian-oligarchs/>.

1. *Drafting the rules:* Given the text of the law and the directives established by Congress, we have not heard good reasons for the extended delay in drafting the rules. The proposed rules that have been published suggest that at least part of the problem is that FinCEN is creating complexity where none should exist. Ignoring the plain text of the law to create hurdles to appropriate access or adding unnecessary and potentially confusing boxes to reporting reforms would appear to be serving as a distraction from the timely completion of the rules. It is less clear that the delays in finalizing rules are a result of funding shortfalls.
2. *Setting up the database, establishing proper verification systems, and education and outreach to key stakeholders:* These are areas where a number of members on this Committee have found agreement on the importance of proper development and implementation. All are critical to an effective rollout of the law, both to ensure that the data is highly useful and that compliance procedures for small businesses are widely understood and simplified.

Fully addressing each of these items involves new and additional costs that were not adequately contemplated in previous appropriations. Licenses to access data for verification, database design and development, outreach to secretaries of state for collaboration, and education of the affected business community to build awareness will all require additional funding.

If an increase in general funding for FinCEN is not possible at this time, perhaps agreement on targeted funding is achievable to address the mutually agreed upon frustrations discussed at today's hearing.

Thank you for the opportunity to share my views at this hearing and I look forward to working with the Committee to address these important issues.